

bcc: Janet Feldstein, 2ERRD-SIC NJ

21 February, 1986

John D. O'Keefe, Esquire
Suite 1113 Robinson Building
15th and Chestnut Streets
Philadelphia, Pennsylvania 19102

Re: Duane Marine Salvage Corporation Site
Porth Amboy, New Jersey
Administrative Order No. II-CERCLA-50107

Dear Mr. O'Keefe:

Enclosed you will find copies of certain petitions for withdrawal of orders. These petitions were made on behalf of certain respondents to one of three administrative orders, Index Nos. II-CERCLA-50102, II-CERCLA-50105, and II-CERCLA-50107, issued in connection with the Duane Marine facility referenced above.

By your letter dated September 16, 1985, you stated that your client, Del Val Ink and Color, Inc., wishes to petition EPA for withdrawal of its administrative order, Index No. II-CERCLA-50107, on the ground that the substances sent by that company to the Duane Marine facility for disposal were not hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et seq. By telephone last week I told you that I would send more detailed instructions for the preparation of such a petition, together with a sample that I felt would be helpful.

Janet Feldstein of EPA's Emergency and Remedial Response Division has reviewed the claim you submitted in the September 16 letter. I have learned from her that she needs more information concerning the chemical constituents of the solvents and water wastes before she can make a final determination on the question of hazardousness. In addition, I will need other information in order to establish a record with a sufficient factual basis for a decision by EPA to dismiss Del Val Ink from the order, or not to dismiss.

The enclosed sample petitions should demonstrate that satisfactory documentation of a claim based on the fact that the materials sent to Duane Marine were not hazardous substances for CERCLA purposes consists of (1) manifests with information that is consistent with such a claim; (2) other records, such as work orders and invoices prepared at the time of the contract with the



waste disposal facility; (3) descriptions of the waste generation process which yielded the waste in question; and (4) affidavits given by employees with sufficient knowledge of the processes and transactions at issue, or by an officer of the corporation, or both, where a sworn statement is needed to supplement documentary information with greater detail.

As I explained to you when we spoke by telephone, the agency requires a company to meet a burden of proof sufficient to convince a court of law of the validity of its claim. Our records must reflect care in the determinations we make, and must document facts sufficient to support those determinations.

As to a claim that Del Val's wastes were consumed in a fire at Duane Marine, that claim would have to be supported, at a minimum, by data that could prove that no wastes of the types sent by Del Val were present at the site when EPA issued its cleanup orders. Even then, questions may remain concerning whether, for example, Del Val's wastes were actually released if they did in fact burn, depending on what we learn when EPA has received your detailed technical information.

If you have further questions, please feel free to call me at (212) 264-8067.

Sincerely,

Margaret Thompson
Assistant Regional Counsel
NJ Superfund Branch
Office of Regional Counsel

Enclosures

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